

9/30/85

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

-----X  
IN THE MATTER OF

AIR PRODUCTS & CHEMICALS, INC.  
ALLIED CORPORATION  
AMERICAN CAN CO.  
AMERICAN CYANAMID(including LEDERLE  
LABORATORIES AND SHULTON, INC.)  
AMERICAN FLANGE & MANUFACTURING  
COMPANY, INC.  
AMERICAN HOECHST CORPORATION  
AMERICAN INKS & COATINGS CORP.  
AMERICAN STANDARD INC.  
ARMSTRONG WORLD INDUSTRIES, INC.  
ASHLAND CHEMICAL CO. (DIVISION OF  
ASHLAND OIL, INC.)  
AT&T TECHNOLOGIES, INC.  
BASF WYANDOTTE CORPORATION  
BEE CHEMICAL CORPORATION  
BENJAMIN MOORE & CO.  
BER-MAR, INC.  
BORDEN, INC.  
BOWEN ENGINEERING, INC.  
HERBERT G. CASE, JR.  
CECOS INTERNATIONAL, INC.(for CECOS  
INTERNATIONAL, INC., BROWNING  
FERRIS INDUSTRIES, INC. and NEWCO;  
CHEMICAL WASTE SYSTEMS, INC.)  
CELLU-CRAFT, INC.  
CHEMCOAT, INC.  
CHEMICAL DYNAMICS CORPORATION  
CHEMRAY COATINGS CORP.  
CIBA-GEIGY CORPORATION  
CITIES SERVICE OIL AND GAS CORP.  
CONTINENTAL TECHNICAL FINISHES CORP.  
CONVERTERS INK CO.  
CUSTOM CHEMICALS CO., INC.  
DART & KRAFT, INC.  
DECORATIVE INDUSTRIES, INC.  
DRI-PRINT FOILS, INC.  
DURALAC, INC.  
E.I. DUPONT DE NEMOURS & CO.  
E.R. SQUIBB & SONS, INC.  
ELL-BEE CHEMICAL COMPANY, INC.  
ENVIRONMENTAL WASTE REMOVAL, INC.  
ESSELTE PENDAFLEX CORP.  
EXXON COMPANY, U.S.A.  
FABERGE, INC.  
FAIRCHILD CAMERA AND INSTRUMENT  
CORP.

200407



ADMINISTRATIVE ORDER  
ON CONSENT

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Respondents.:

Proceeding Under Section 106(a) :  
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 mental Response, Compensation :  
 and Liability Act, 42 U.S.C. :  
 §9606(a) :  
 -----X

#### JURISDICTION

The following Administrative Order on Consent ("Order") is entered into with the above-captioned Respondents pursuant to the authority vested in the President of the United States by §106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §9606(a), which authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12316, 46 Fed. Reg. 42237 (August 20, 1981) and duly redelegated to the Regional Administrator, EPA Region II on March 17, 1983. Pursuant to that authority, EPA hereby makes the following Findings and Determination and issues the following Order on Consent. Pursuant to Section 106(a) of CERCLA, the State of New Jersey Department of Environmental Protection (NJDEP) has been notified of this Order.

#### DEFINITIONS

1. As used in this Order, unless otherwise clearly required by context, the following terms shall have the following meanings:

A. Respondents shall include all individuals, companies, partnerships, or other business entities listed in the caption of this Order.

B. Generator Respondents shall include all Respondents with the exception of Leif R. Sigmond, Dominick Presto, Herbert Case, Mack Barnes, Scientific Chemical Processing, Inc., Inmar Associates, and Transporter Respondents.

C. Transporter Respondents shall include any Respondents who accepted hazardous substances for transport by air, rail, highway, water, etc. to the facility.

D. Owner/Operator Respondents shall include Inmar Associates, Leif R. Sigmond, Dominick Presto, Herbert Case, Mack Barnes, and Scientific Chemical Processing, Inc.

E. Facility shall mean real property located at 216 Paterson Plank Road, Carlstadt, New Jersey and occupying Block 124, Lots 1 through 5 on the tax map of Bergen County, Township of Carlstadt.

F. CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., P.L. 96-510.

G. Hazardous Substance shall mean any substance that falls within the definition of "Hazardous Substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

H. Designated Coordinator shall mean the person designated by Respondents which person shall be charged with the duty of, at all times, being knowledgeable about and overseeing the progress of all work performed pursuant to this Order.

I. National Contingency Plan (NCP) shall mean the National Oil and Hazardous Substances Contingency Plan promulgated by EPA pursuant to §105 of CERCLA, 42 U.S.C. §9605, and codified at 40 CFR Part 300, and all amendments or modifications thereto.

J. Remedial Action shall have the meaning set forth in the portion of the NCP found at 40 CFR §300.6.

#### STATEMENT OF PURPOSE

2. EPA and the consenting parties, acting in good faith to resolve certain problems arising out of this matter, to further the public interest, to avoid prolonged and complicated litigation between the parties, and to undertake a remedial investigation and feasibility study to determine the extent to which hazardous substances are present at the site, and to develop remedial alternatives, without trial or adjudication of any issues of fact or law and without admission by the consenting parties to liability for any purpose, enter into this Consent Order.

EPA FINDINGS OF FACT

3. Each Respondent is a person, as defined in §101(21) of CERCLA, 42 U.S.C. §9601(21), and a responsible party under Section 107(a) of CERCLA, 42 U.S.C. §9607(a). It is EPA's position that each Respondent is jointly and severally responsible, with each and every other Respondent, for carrying out the provisions of this Order.

4. The hazardous substances referred to in this Order shall mean any substances meeting the definition of "Hazardous Substance" as defined in §101(14) of CERCLA, 42 U.S.C. §9601(14).

5. Inmar Associates, Inc. is a corporation organized under the laws of the State of New Jersey and doing business in the State of New Jersey, which owns a parcel of property in Carlstadt, Bergen County, New Jersey. The property is bordered on the north by Peach Island Creek, a surface water of the United States, on the south by Paterson Plank Road, on the west by Gotham Parkway, and on the east by Carolina Trucking Company ("the Inmar Property"). The property consists of Block 124, Lots 1 through 5, Township of Carlstadt (See Figure 1, attached).

6. During the period commencing in or about 1970 and continuing until in or about 1980, the Inmar property was leased by Scientific Chemical Processing, Inc. (a corporation organized under the laws of the State of New Jersey), which operated on the property a waste collection, transportation, treatment and disposal service. The property leased by Inmar Associates, Inc. to Scientific Chemical Processing, Inc. constitutes a "Facility," as that term is defined in §101(9) of CERCLA, 42 U.S.C. §9601(9). The property shall hereinafter be referred to as "the site" or "the facility."

7. During the period of its operation, Scientific Chemical Processing, Inc. accepted, transported, transferred, stored, reprocessed, reclaimed, treated, blended, and disposed of certain materials which contained hazardous substances.

8. The Owner/Operator Respondents to this Order owned the facility and/or operated businesses at the facility which engaged in the transfer, storage, reprocessing, reclamation, reuse, blending, treatment, and/or the disposal of hazardous substances.

9. The Generator Respondents to this Order made arrangements with transporters and/or Scientific Chemical Processing, Inc. for the transport, storage, treatment or disposal of hazardous substances, which include certain substances chemically identical to or similar to those released and/or in danger of being released from the facility to the environment.

10. The Transporter Respondents to this Order accepted hazardous substances for transport to the facility.

11. Based upon inspections performed at the site by the NJDEP and EPA between 1977 and 1984, sampling and chemical analyses, and environmental surveys conducted at the site, EPA has determined that the material which has been released, or threatens to be released, into the environment from spills and/or leaking containers at the site, contains hazardous substances, and that surface water, ground water, air and soil at the site have been or threaten to be contaminated. Specifically, analyses of waste samples performed during 1979 and a NJDEP site inspection report dated October 10, 1980 (which cites a June 1980 inventory of waste at the site) indicate the following wastes and/or constituents of waste were released or threatened to be released from the site: PCB-containing materials, acids, benzene, chloroform, trichloroethylene, toluene, styrene, xylenes, carbon tetrachloride, chloroethane, ethylbenzene, ethylacetate, isopropanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, phenolic resin, tetrachloroethane, tetrachloroethylene, trichloroethane, arsenic, mixed solvents, paint sludge and solvent sludge.

12. Based on the aforementioned inspections, sampling and chemical analyses, and environmental surveys, the New Jersey Supreme Court in October 1980 refused to stay the effectiveness of NJDEP's order that Scientific Chemical Processing, Inc. cease operations.

13. At that time, there were approximately 56 tanks and/or tank trailers and 50 drums containing hazardous substances at the site. According to an Inventory prepared by Scientific Chemical Processing, Inc., in December 1980, various wastes containing hazardous substances still remained at the site, including, but not limited to, solvents and thinners, etching solutions, methanol/phosphoric acid solutions, sodium sulfate solutions, and fuel residues. During 1984, many of the aforesaid tanks/tank trailers and drums were removed from the site by Inmar Associates, under NJDEP supervision. NJDEP reported that many were severely discolored, indicating leaks, and some of the tanks had makeshift patches.

14. At present, there are 4 tanks and 1 tank trailer remaining at the site. Lab analyses performed for Inmar Associates indicate that the liquids, solids, and/or sludges in these tanks/tank trailer contain PCBs. EPA has evidence of leaking, and some of the tanks are patched. There is no containment system in place around the tanks.

15. EPA has determined that many of the substances at the facility are hazardous substances, have been shown to cause a variety of adverse effects to exposed populations, and include known or suspected carcinogens and/or mutagens.

16. The presence of such hazardous substances at the site, and their past and/or potential future migration to surrounding soils, surface water, and groundwater, constitute an actual

release or threatened release from the facility within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §6901 (22).

17. Based on present information, EPA has determined that:

(a) The site is located on a filled-in section of the Hackensack Meadows. The fill, which consists of organic silt, is underlain by clay deposits interspersed with beds of sand and gravel. These clay deposits, and sand and gravel beds are discontinuous and may not comprise a major confining unit. The bedrock at the site is the Brunswick Formation, which underlies the clay, sand and gravel deposits at depths ranging from approximately 40 to 120 feet in the vicinity of the site.

(b) The two major aquifers in the area of the site are the Brunswick Formation and the Quarternary age stratified drift located along river channels. The Brunswick Formation yields water from fractures in the rock. Fracturing decreases with depth, and most of the groundwater is produced by the upper, highly fractured part of the formation.

(c) There are approximately 21,000 people living within three miles of the site. The primary water supply for this population is groundwater. The nearest well is located about 4000 feet from the site.

(d) The hydrogeologic conditions described in paragraphs 17(a) and (b) constitute conditions which may enhance the vertical transmission of hazardous substances in the groundwater. The groundwater in the area is used by the local populations for drinking purposes.

18. Peach Island Creek borders the site on the north. This creek has been designated as Freshwater-2 (FW-2) by NJDEP. FW-2 criteria state that such waters should "be suitable for maintenance, migration, and propagation of the natural ecosystem and support biota." Peach Island Creek joins Berrys Creek Canal approximately 1500 feet northwest of the site. Berrys Creek Canal joins the Hackensack River approximately 2 miles downstream of its confluence with Peach Island Creek. The Hackensack River enters the Atlantic Ocean in the New Jersey Bay approximately 7 miles south of the site. Contamination of Peach Island Creek would pose a threat of contamination to these other navigable waters.

19. Visual observations by EPA and NJDEP of discoloration of and leachate seepage into Peach Island Creek noted during various site inspections indicate possible contamination of surface water, creek sediment, soil, and groundwater.

20. The site is on the National Priorities List ("NPL"), 40 CFR Part 300, Appendix B, which has been issued pursuant to Section 105(8)(b) of CERCLA, 42 U.S.C. §9605(8)(b).

21. In order to determine the nature and extent of the

release and threatened release at the site, and to select an appropriate remedial alternative, a remedial investigation and feasibility study (RI/FS) must be conducted in conformance with the National Contingency Plan, 40 CFR Part 300. The Work Plan submitted pursuant to paragraph 25, below, which will be appended hereto and labelled Appendix I upon approval by EPA, has been prepared by Respondents for use in performing the RI/FS.

22. The foregoing Findings and determinations have been made by EPA and are specifically denied by Respondents. Respondents deny that conditions at the Scientific Chemical Processing Carlstadt site or surrounding area present or may present an imminent and substantial endangerment to the public health, welfare, and/or the environment within the meaning of §106(a) of CERCLA. By consenting to this Order, or by taking any actions under this Order, Respondents do not concede the correctness of any fact alleged or validity of any legal finding or determinations asserted in the foregoing Findings or elsewhere in this Order. Neither this Order nor any action taken by Respondents pursuant to this Order shall constitute any evidence against Respondents, an admission of liability or responsibility by Respondents, a waiver by Respondents of any rights or defenses, nor an estoppel against Respondents with respect to any matter, act, claim, or thing related in any manner to the facility for any purpose other than in an action by EPA to enforce the terms of this Order. No payment(s) by Respondents pursuant to this Order, except for those under paragraph 31.C., below, shall be construed to be a fine, penalty, or monetary sanction. Nevertheless, Respondents agree not to contest the authority or jurisdiction of the Regional Administrator to issue this Order, and agree not to contest the validity or terms of this Order in any action brought by EPA to enforce the terms hereof.

#### DETERMINATION BY THE REGIONAL ADMINISTRATOR

23. Based on the above Findings, and the entirety of the administrative record, and pursuant to Section 106(a) of CERCLA, the Regional Administrator has determined that the release and threatened release of one or more hazardous substances from the facility may present an imminent and substantial endangerment to the public health, welfare and/or the environment.

#### ORDER

24. Based on the foregoing, it is hereby ordered and agreed that the Respondents shall undertake a remedial investigation and feasibility study at the facility in accordance with the requirements specified below. All activities performed pursuant to this Order shall be completed as soon as practicable even though time periods for their completion may be specified herein or in the Work Plan.



25. Remedial Investigation/Feasibility Study Work Plan

A. Respondents have submitted to EPA a work plan for the performance of a Remedial Investigation/Feasibility Study ("RI/FS Work Plan"). EPA has reviewed the RI/FS Work Plan for consistency with the National Contingency Plan, 40 CFR Part 300, EPA's "Guidance on Remedial Investigations Under CERCLA, May, 1985," and EPA's "Guidance on Feasibility Studies Under CERCLA, April, 1985." EPA has commented thereon in writing to Respondents, and Respondents have had an opportunity to meet with EPA and discuss such comments before they became final. Within 5 days of the effective date of this Order, Respondents shall amend the RI/FS Work Plan as required by those comments or as otherwise approved by EPA and submit the amended RI/FS Work Plan to EPA. EPA will make the final determination as to the sufficiency of the RI/FS Work Plan submitted by Respondents. At such time as EPA determines that the RI/FS Work Plan is acceptable, EPA will transmit to Respondents a written statement to that effect, and the RI/FS Work Plan will be appended to this Order and labelled Appendix I.

26. Remedial Investigation

A. According to the schedule presented in the EPA-approved RI/FS Work Plan ("the Work Plan") attached as Appendix I, Respondents shall submit to EPA for review and approval a detailed Site Operations Plan for the performance of a Remedial Investigation (RI) in conformance with the National Contingency Plan, EPA's "Guidance on Remedial Investigations Under CERCLA, May 1985," and the Work Plan of this Order. The Site Operations Plan shall fully describe how those activities called for in the Work Plan will be implemented, and shall include but should not necessarily be limited to the items in Task 2, Section 2.4.2. (Site Operations Plan) of the Work Plan and items i through x, below:

- i. a detailed map of the site depicting all sampling locations;
- ii. the number and types of samples to be obtained at each sampling location;
- iii. the overall management plan, including identification of contractors and subcontractors and their respective responsibilities for performance of the specific tasks set forth in Appendix I;
- iv. a detailed schedule for performance of the specific tasks;
- v. a Quality Assurance/Quality Control (QA/QC) plan for all investigations to be performed [the QA/QC plan shall be completed in accordance with Section 10 of the publication, Test Methods for Evaluating Solid Waste (SW-846) and

the guidance appended hereto and labelled Appendix II];

- vi. provision for completing a QA/QC evaluation of laboratory data (to validate the data) within 2 weeks of completion of laboratory analyses;
- vii. a description of the chain of custody procedures to be followed, which shall conform to those set forth in Section 1.3 of SW-846;
- viii. a Health and Safety plan;
- ix. a Contingency plan for conducting site activities; and
- x. the curriculum vitae of all professionals expected to perform the RI, and a description of the responsibilities and the anticipated levels of effort of each such professional.

B. EPA will review the Site Operations Plan and comment thereon in writing. EPA will address its comments to the conformance of the Site Operations Plan with sound management, engineering and scientific practices; technological feasibility; established environmental monitoring procedures; and consistency with the Work Plan. EPA will include in its comments an explanation of the basis of its comments. Within 5 business days of receipt of EPA's comments, Respondents will have an opportunity to meet with EPA to discuss such comments before they become final. Within 7 days of Respondents' receipt of the written final EPA comments, Respondents shall amend the Site Operations as required by those comments or as otherwise approved by EPA and submit the modified document to EPA.

C. EPA will make the final determination as to the sufficiency of the Site Operations Plan. At such time as EPA determines that the SOP is acceptable and in conformance with the NCP, EPA will transmit to Respondents a written statement to that effect.

D. Respondents shall perform the RI in conformance with the approved SOP and the Work Plan pursuant to the schedule set forth in the Work Plan. Respondents shall complete all activities specified therein and shall submit to EPA for review and approval a report detailing the results of the remedial investigation ("Preliminary RI Report").

E. EPA will review the Preliminary RI Report and comment thereon in writing; EPA will include an explanation of the basis of its comments. Within 5 business days of receipt of EPA's comments, Respondents will have an opportunity to meet with EPA to discuss such comments before they become final. Within 30 days of the receipt of such written final EPA comments, Respondents shall amend the said Report as required by those comments or as otherwise agreed upon by EPA, and shall promptly submit

the amended report to EPA ("the RI Report"). EPA may, if necessary to accomplish the goals of the RI/FS as stated in the approved Work Plan, require the performance of additional investigatory work consistent with the provisions of the National Contingency Plan and in conformance with a schedule to be set forth by EPA.

F. EPA will make the final determination as to the sufficiency of the RI Report and any additional studies. At such time as EPA determines that the RI Report is acceptable and in conformance with the NCP, EPA will transmit to Respondents a written statement to that effect.

## 27. Feasibility Study

A. Respondents shall perform a Feasibility Study in conformance with the following: National Contingency Plan, 40 CFR Part 300 (including 40 CFR 300.68(a) through (j)); EPA approved Work Plan (Appendix I), Section 3.0, Tasks 7-12; and EPA's "Guidance on Feasibility Studies Under CERCLA, April 1985."

B. Respondents shall perform the Feasibility Study (FS) in conformance with the Work Plan pursuant to the schedule set forth in the Work Plan. Respondents shall submit to EPA for review a Preliminary Feasibility Study Report which shall include a recommended remedial alternative. EPA will review and comment on the Preliminary FS Report.

C. Within 15 days of receipt of written final EPA comments on the Preliminary FS Report, Respondents shall modify that report as may be necessary to conform with such comments and submit the modified report to EPA for approval, and/or shall initiate such additional engineering evaluations as EPA finds necessary, in accordance with a schedule set forth by EPA. With the Preliminary FS Report, as amended, Respondents also shall submit a conceptual design for the recommended remedial action and the design shall conform to a format acceptable to EPA. The Preliminary FS Report, as amended, and the conceptual design for the recommended remedial action shall constitute the "Draft FS Report" for publication pursuant to paragraph 27.E., below.

D. EPA will make the final determination as to the sufficiency of the Draft FS Report submitted by Respondents. At such time as EPA determines that the Draft FS Report is sufficient, and acceptable for publication pursuant to Paragraph 27.E., below, EPA will transmit to Respondents a written statement to that effect.

E. Following submittal of the Draft FS Report, EPA will announce the availability of both the RI Report and the Draft FS Report to the public for review and comment. Following the public comment period (which may include both written and oral comments), EPA will determine if the Reports should be modified

or accepted as submitted, and will so notify Respondents in writing. Within 5 business days of EPA's written determination, Respondents will have an opportunity to meet with EPA to discuss such modifications. Unless otherwise approved by EPA, within 30 days of receipt of EPA's written determination that either the RI Report or the Draft FS Report should be modified, Respondents shall modify either or both of the reports (which may, inter alia, entail a change in the recommended remedial alternative) as directed by EPA or as otherwise approved by EPA, and submit the modified document(s) to EPA. Should EPA require any modification(s), Respondents reserve their right to comment on, or disagree with these modifications. Respondents' comments on any EPA modification(s) shall be set forth in footnotes in or an appendix to the modified document. EPA regulations, policy and guidance in effect at the time such public comment period is initiated shall govern the procedures to be followed. EPA will make the final determination in any dispute regarding the sufficiency of the RI Report and the FS Report.

F. The Final FS Report shall not select a remedial alternative. EPA will make the final selection of the remedial alternative(s) to be implemented.

## 28. Sampling and Reporting

A. Upon request by EPA, Respondents shall provide EPA or its designated representatives with a reasonable number of duplicate and/or split samples of any samples collected in furtherance of work performed in accordance with this Order.

B. The Respondents shall provide monthly written progress reports to EPA. At a minimum, these progress reports shall: (1) describe all actions and activities undertaken toward achieving compliance with this Order, and (2) include all plans and procedures completed subsequent to EPA approval of the RI/FS Work Plan, during the past month as well as such actions and plans which are scheduled for the next month. These reports are to be submitted to EPA by the tenth day of each month following the effective date of this Order.

C. Upon request by EPA, all data and information, including raw sampling and other monitoring data, generated pursuant to this Order by Respondents or on behalf of Respondents, shall immediately be made available to EPA or its designated representatives.

D. Respondents shall give EPA four (4) business days advance notice of the following expected activities under this Order: all monitoring well activities, including but not limited to drilling, installation and testing, and all on-site and off-site sampling activities.

E. EPA and the Respondents agree that each shall preserve, during the pendency of this Order and for a minimum of six (6)

years after its termination, all data, records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys, concerning the implementation of work under this Order, despite any document retention policy to the contrary. No data, information, or records shall be destroyed for six years after the termination of work under this Order without either the express written approval of EPA, or a written offer by Respondents to provide such material to EPA followed by EPA's written rejection of that offer. After this six year period, the Respondents shall notify EPA within 30 days prior to the destruction of any such documents. Upon request by EPA, the Respondents shall make available to EPA such records or copies of any such records unless otherwise privileged under law.

F. All records prepared or compiled by Respondents and delivered to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by a Respondent in conformance with 40 CFR Part 2. Records so identified shall be treated as confidential only in accordance with the applicable confidentiality regulations. Sampling and other monitoring data, and hydrological and geological information, may not be considered confidential. Furthermore, it is understood by the parties that EPA may release all such records to the NJDEP.

G. The original and nine copies of all correspondence, reports, work plans and other writings required under the terms of this Order to be submitted to EPA shall be sent by certified mail, return receipt requested to:

Chief, Site Investigation and Compliance Branch  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
26 Federal Plaza  
New York, New York 10278

Attention: SCP-Carlstadt Project Officer

One copy of all such writings shall be transmitted by certified mail, return receipt requested to:

Chief, Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Room 437  
26 Federal Plaza  
New York New York 10278

Attention: SCP-Carlstadt Site Attorney

29. EPA Communications and Decisions

A. Written communications from EPA to Respondents will be sent by certified mail, return receipt requested to:

Respondents' Facility Coordinator  
(address to be determined)

Thomas M. Armstrong, Counsel  
Corporate Environmental Programs  
General Electric Company  
3135 Easton Turnpike-W1A  
Fairfield, CT 06431.

B. As appropriate during the course of implementation of the remedial actions under this Order, Respondents or their consultants or contractors, acting through the Facility Coordinator, may confer with the EPA concerning those actions. Based upon new circumstances or new information not in the possession of EPA on the date of this Order, the Facility Coordinator may request, in writing to EPA, approval of a modification of the EPA-approved Work Plan. If approved by the EPA, such modifications shall be implemented immediately by Respondents.

C. All decisions of EPA under this Order, including approvals; disapprovals; grants or denials of requests for extensions of time; and requests for modifications of reports, work plans, specifications, schedules and other work outputs will be communicated in writing to Respondents by the Chief, Site Investigation and Compliance Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

D. No informal advice, guidance, suggestions or comments by EPA or NJDEP regarding reports, plans, specifications, schedules or any other writings submitted by Respondents shall be construed as relieving Respondents of their obligation to obtain such formal approvals as may be required by this Order. However, oral approvals may be obtained for minor matters if they are confirmed in writing within 2 business days.

30. Respondents' Facility Coordinator  
and EPA Inspection Authority

A. Within 15 days of the effective date of this Order, Respondents shall provide EPA with the name, title, address, phone number and qualifications of their designated Facility Coordinator, who shall be responsible for oversight of the implementation of this Order, including all activities required herein. The Facility Coordinator shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Order. All correspondence and other writings from EPA to Respondents shall be made available to the Facility Coordinator. Counsel for Respondents shall not be

eligible to be Facility Coordinator. Respondents shall have the right to change their Facility Coordinator at any time. However, Respondents shall notify EPA in writing at least five (5) working days prior to any such change. If such advance notice is not feasible, notice shall be given by the best means and as far in advance as possible under the circumstances.

B. EPA and EPA's representatives, including but not limited to their employees, agents, contractors and consultants, shall have authority to observe the work being carried out pursuant to this Order, for the purposes of inspecting and observing Respondents' progress in implementing the requirements of this Order, or for the purpose of verifying the data submitted to EPA by Respondents concerning such implementation. To the maximum extent possible under the law, Respondents shall forthwith honor all requests by EPA or its representatives to observe the work being carried out pursuant to this Order and also, at reasonable times, shall permit such persons to inspect and copy all writings, including all data, in any way pertaining to work undertaken pursuant to this Order. Respondents shall not be required to permit anyone who is not bound by EPA's confidentiality regulations to inspect or copy any writing which is entitled to confidential treatment under Title 40 CFR Part 2. Notwithstanding the above, EPA hereby retains all its inspection authority under CERCLA and the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. NJDEP and its designated representatives, as well as any EPA contractor and its representatives, shall be eligible to be designated representatives of EPA under this paragraph.

C. Respondents shall not interfere with EPA access to the Site or any other premises upon which work under this Order may be performed. Further, to the extent practicable and within their rights and abilities to do so, (including bringing the terms of this paragraph to the attention of their selected contractors) Respondents shall support and assist EPA in obtaining access to the site and other premises at which work in furtherance of the requirements of this Order is carried out, and shall similarly support and assist EPA in exercising its inspection and other authority under this provision including, but not limited to review and copying of records.

### 31. Enforcement Actions

A. In the event that Respondents fail to adhere to any requirement of this Order; or, notwithstanding compliance with the terms of this Order, upon the occurrence or discovery of a situation as to which EPA would be empowered to take any further response action(s), including but not limited to the prevention or abatement of an imminent and substantial endangerment to the public health, welfare or the environment arising from conditions at the facility; or under any other circumstances authorized by law and not inconsistent with terms of this Order, EPA reserves the right to, after notice to Respondents and other identified potentially responsible parties, institute federally-funded

response activities and subsequently pursue cost recovery actions available, and/or EPA may issue orders to Respondents pursuant to available statutory authority. Respondents do not hereby consent to any future action taken by EPA under this paragraph.

B. EPA reserves its right to bring an action against Respondents pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any costs incurred in oversight of Respondents' implementation of this Order, and any other costs incurred by EPA in connection with investigative or response activities at the Site (to include all costs associated with EPA's performance of the RI/FS or any part thereof, in the event that Respondents fail to complete the RI/FS in conformance with the requirements of this Order).

C. If Respondents fail, without prior EPA approval (which shall not be unreasonably withheld) to conform with the requirements set forth in paragraphs 25, 26, and 27 of this Order by the time periods specified therein (unless caused by a force majeure event as defined in paragraph 32.H, below), Respondents shall each make payments to the EPA in the amount indicated below for each day of noncompliance:

<u>Days After Required Date</u>	<u>Stipulated Penalties</u>
0-5	\$ 0 for each day
6-10	\$ 250 for each day
11-20	\$ 500 for each day
greater than 21	\$ 1000 for each day

After 30 consecutive days of noncompliance, EPA reserves the right to pursue civil penalties of up to \$5000 per day pursuant to Section 106(b) of CERCLA, in lieu of these stipulated penalties. Any such penalty shall be due and payable ten days following receipt of a written demand by EPA describing the basis for the penalties. Payment of such stipulated civil penalties shall be made by cashier's or certified check payable to the "Hazardous Substances Response Trust Fund", and mailed to the following address with a notation of the docket number of this Order: EPA - Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251. A copy of EPA's demand letter shall accompany the payment; a copy of the transmittal letter shall be sent to the Chief, Site Investigation and Compliance Branch, EPA, Region II.

D. Notwithstanding any other provision of this Order, EPA reserves the power to take enforcement actions for any violation of law or this Order (except that EPA may, instead, elect to continue the imposition of stipulated penalties pursuant to paragraph 31.C, above). Failure to comply with this Order, or



any portion hereof without sufficient cause may subject Respondents to an action under Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3), for punitive damages in the amount of three times the total of all costs incurred by the government as a result of Respondents' failure to take proper action.

### 32. General Provisions

A. This Order shall be effective on the next working day following the date on which it is signed by the Regional Administrator.

B. All work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

C. All actions performed by Respondents in implementing this Order shall be in compliance with all applicable federal, state, and local laws and regulations, including but not limited to 40 CFR, Part 300. Respondents shall be responsible for obtaining all necessary permits, licenses and other authorizations.

D. The Work Plan, Site Operations Plan, the RI Report and the Draft FS Report, in addition to all other reports, work plans and other writings required under the terms of this Order, upon approval by EPA, are incorporated into this Order.

E. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, their officers, directors, employees, agents, servants, receivers, trustees, successors, or assignees, or of any persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this Order, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondents in carrying out activities pursuant to this Order.

F. This Order shall apply to and be binding upon Respondents and Respondents' heirs, successors, and assigns.

G. Nothing contained in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

H. Respondents' activities under this Order shall be performed within the time limits set forth herein unless performance is delayed by events which constitute a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond Respondents' control. Increased costs or changed financial circumstances shall not be considered a force majeure. Respondents shall verbally notify

EPA's designated representative and EPA's project coordinator as soon as possible following Respondents' awareness that circumstances constituting a force majeure have occurred or are likely to occur. If the designated representative or the project coordinator cannot be contacted, Respondents shall attempt to leave a message at the office of each person who could not be contacted. In addition, Respondents shall notify EPA in writing, over the signature of a responsible official of Respondents, as soon as possible but not later than ten (10) days after Respondents become aware that circumstances constituting a force majeure have occurred. Respondents shall have the burden of proving that any failure to comply with any requirement of this Order is excused by this paragraph. Respondents' failure to timely notify EPA as required by this subparagraph shall render the remaining provisions of this subparagraph null and void insofar as they may entitle Respondents to an extension of time, (unless EPA in fact had actual knowledge of such circumstances).

I. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order. Respondents shall provide written notification to EPA of any circumstances which have caused or which Respondents believe are likely to cause a delay of performance. Such written notice: 1) shall be provided as soon as possible, but not later than ten (10) days after the date when Respondents knew or should have known of the occurrence of such circumstances; 2) shall be accompanied by all available documentation, including but not limited to third-party correspondence; and 3) shall include a) a description of the circumstances causing or potentially causing the delay; b) the actions (including pertinent dates) that Respondents have taken and/or plans to take to minimize any delay; and c) the date by which or time period within which Respondents propose to complete delayed activities. Such notification does not relieve the Respondents of any obligation under this Order.

J. Nothing contained in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties. Nothing in this Order constitutes a decision on pre-authorization of funds under Section 111(a)(2) of CERCLA.

K. Nothing in this Order shall be construed as any determination by EPA or by any of the parties consenting hereto as to the appropriate degree of relative contribution among them in the performance of this Order, or with respect to any other matter arising out of the operations of the facility, or with respect to any indemnity obligations as between Owner/Operator Respondents and other Respondents, or as a waiver of any rights of contribution and indemnity as among the parties.

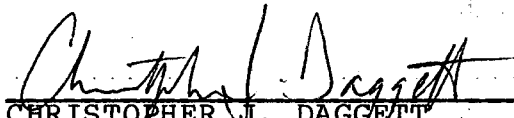
### 33. Termination and Satisfaction

The provisions of this Order shall be deemed satisfied

upon the Respondents' receipt of written notice from EPA that the Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this Order, including any additional tasks which EPA has determined to be necessary (refer to paragraph 26.E., above), have been completed.

IT IS SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
CHRISTOPHER J. DAGGETT  
Regional Administrator  
U.S. Environmental Protection Agency  
Region II

SEPTEMBER 30, 1985  
DATE

